

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1282

Introduced by Stuhr, 24

Read first time January 18, 2000

Committee: Judiciary

A BILL

1 FOR AN ACT relating to habitual criminals; to amend sections
2 29-2221, 60-4,108, and 60-4,109, Reissue Revised Statutes
3 of Nebraska; to provide for enhanced penalties for
4 subsequent violations as prescribed; and to repeal the
5 original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2221, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-2221. (1) If a person ~~whoever~~ has been twice
4 convicted of a crime, sentenced, and committed to prison, in this
5 or any other state or by the United States or once in this state
6 and once at least in any other state or by the United States, for
7 terms of not less than one year each, such person shall, upon
8 conviction of a felony committed in this state, be deemed to be a
9 habitual criminal and shall be punished by imprisonment in a
10 Department of Correctional Services adult correctional facility for
11 a mandatory minimum term of ten years and a maximum term of not
12 more than sixty years, except that:

13 (a) If the felony committed is in violation of section
14 28-303, 28-304, 28-308, 28-313, 28-319, 28-502, 28-929, or 28-1222
15 or subdivision (2)(d) or subsection (6) of section 60-6,196, and at
16 least one of the habitual criminal's prior felony convictions was
17 for a violation of one of the sections, subdivision, or subsection
18 listed in this subdivision or of a similar statute in another state
19 or of the United States, the mandatory minimum term shall be
20 twenty-five years and the maximum term not more than sixty years;

21 (b) If the felony committed is in violation of subsection
22 (3) of section 28-306 and at least one of the prior convictions is
23 in violation of subsection (3) of section 28-306 and the other is
24 in violation of one of the sections, subdivision, or subsection set
25 forth in subdivision (a) of this subsection or if the felony
26 committed is in violation of one of the sections, subdivision, or
27 subsection set forth in subdivision (a) of this subsection and both
28 of the prior convictions are in violation of subsection (3) of

1 section 28-306, the mandatory minimum term shall be twenty-five
2 years and the maximum term not more than sixty years; and

3 (c) If a greater punishment is otherwise provided by
4 statute, the law creating the greater punishment shall govern.

5 (2) When punishment of an accused as a habitual criminal
6 is sought, the facts with reference thereto shall be charged in the
7 indictment or information which contains the charge of the felony
8 upon which the accused is prosecuted, but the fact that the accused
9 is charged with being a habitual criminal shall not be an issue
10 upon the trial of the felony charge and shall not in any manner be
11 disclosed to the jury. If the accused is convicted of a felony,
12 before sentence is imposed a hearing shall be had before the court
13 alone as to whether such person has been previously convicted of
14 prior felonies. The court shall fix a time for the hearing and
15 notice thereof shall be given to the accused at least three days
16 prior thereto. At the hearing, if the court finds from the
17 evidence submitted that the accused has been convicted two or more
18 times of felonies and sentences imposed therefor by the courts of
19 this or any other state or by the United States, the court shall
20 sentence such person so convicted as a habitual criminal.

21 (3) If the person so convicted shows to the satisfaction
22 of the court before which the conviction was had that he or she was
23 released from imprisonment upon either of such sentences upon a
24 pardon granted for the reason that he or she was innocent, such
25 conviction and sentence shall not be considered as such under this
26 section and section 29-2222.

27 Sec. 2. (1) If a person has been convicted three or more
28 times in this state under any of the following sections,

1 subsections, or subdivisions or under any similar laws in any other
2 state, the United States, or any territory subject to the
3 jurisdiction of the United States or once at least in this state
4 and once at least in any other state, the United States, or any
5 territory subject to the jurisdiction of the United States within a
6 five-year period, such person shall, upon conviction of a felony or
7 conviction under subdivision (2)(a), (b), or (c) of section
8 60-6,196 or subdivision (4)(a), (b), or (c) of section 60-6,197
9 committed in this state, be deemed to be a habitual criminal and
10 shall be punished by imprisonment in a Department of Correctional
11 Services adult correctional facility for a mandatory minimum term
12 of ten years and a maximum term of not more than thirty years:
13 Sections 28-305, 28-309, 28-311, 28-311.01, 28-311.04, 28-503,
14 subsection (2) of section 28-504, 28-930, 28-931, and any
15 conviction under subdivision (2)(a), (b), or (c) of section
16 60-6,196 or subdivision (4)(a), (b), or (c) of section 60-6,197.

17 (2) When punishment of an accused as a habitual criminal
18 is sought, the facts with reference thereto shall be charged in the
19 indictment or information which contains the charge of the felony
20 upon which the accused is prosecuted, but the fact that the accused
21 is charged with being a habitual criminal shall not be an issue
22 upon the trial of the felony charge and shall not in any manner be
23 disclosed to the jury. If the accused is convicted of a felony,
24 before sentence is imposed a hearing shall be had before the court
25 alone as to whether such person has been previously convicted of
26 any of the felonies listed in subsection (1) of this section. The
27 court shall fix a time for the hearing and notice thereof shall be
28 given to the accused at least three days prior thereto. At the

1 hearing, if the court finds from the evidence submitted that the
2 accused has been convicted three or more times of any of the
3 felonies listed in subsection (1) of this section, and sentences
4 imposed therefor by the courts of this or any other state or by the
5 United States, the court shall sentence such person so convicted as
6 a habitual criminal.

7 (3) If the person so convicted shows to the satisfaction
8 of the court before which the conviction was had that he or she was
9 released from imprisonment upon either of such sentences upon a
10 pardon granted for the reason that he or she was innocent, such
11 conviction and sentence shall not be considered as such under this
12 section and section 29-2222.

13 (4) In any case involving a felony listed in subsection
14 (1) of this section in which the defendant previously appeared
15 before a juvenile court, the record or records of the disposition
16 of the defendant as well as any evidence used in any juvenile court
17 hearing shall be available to the prosecuting attorney, the
18 defendant, and the court in determining sentencing.

19 Sec. 3. Section 60-4,108, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 60-4,108. It shall be unlawful for any person to operate
22 a motor vehicle during any period that his or her operator's
23 license has been suspended, revoked, or impounded pursuant to
24 conviction or convictions for violation of any law or laws of this
25 state or by an order of any court or by an administrative order of
26 the director or after such suspension, revocation, or impoundment
27 but before reinstatement of his or her license or issuance of a new
28 license. Except as otherwise provided by law, any person so

1 offending shall: (1) For a first such offense, be guilty of a
2 Class III misdemeanor, and the court shall, as a part of the
3 judgment of conviction, order such person not to operate any motor
4 vehicle for any purpose for a period of one year from the date
5 ordered by the court; ~~and~~ (2) for ~~each subsequent~~ a second such
6 offense, be guilty of a Class ~~III~~ II misdemeanor, and the court
7 shall, as a part of the judgment of conviction, order such person
8 not to operate any motor vehicle for any purpose for a period of
9 two years from the date ordered by the court; and (3) for each
10 subsequent such offense, be guilty of a Class I misdemeanor, and
11 the court shall, as a part of the judgment of conviction, order
12 such person not to operate any motor vehicle for any purpose for a
13 period of five years from the date ordered by the court. Such
14 order of the court shall be administered upon sentencing, upon
15 final judgment of any appeal or review, or upon the date that any
16 probation is revoked, whichever is later. Such revocation shall
17 not run concurrently with any jail term imposed.

18 Sec. 4. Section 60-4,109, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 60-4,109. Upon conviction of any person in any court
21 within this state of a violation of any city or village ordinance
22 pertaining to the operation of a motor vehicle by such person
23 during any period that his or her operator's license has been
24 revoked or suspended pursuant to any law of this state or after
25 such suspension or revocation but before reinstatement of his or
26 her license or issuance of a new license, the penalty shall be as
27 follows: (1) For a first such offense, such person shall be guilty
28 of a Class III misdemeanor, and the court shall, as a part of the

1 judgment of conviction, order such person not to operate any motor
2 vehicle for any purpose for a period of one year from the date
3 ordered by the court; ~~and~~ (2) for ~~each subsequent~~ a second such
4 offense, such person shall be guilty of a Class ~~III~~ II misdemeanor,
5 and the court shall, as a part of the judgment of conviction, order
6 such person not to operate any motor vehicle for any purpose for a
7 period of two years from the date ordered by the court; and (3) for
8 each subsequent such offense, be guilty of a Class I misdemeanor,
9 and the court shall, as a part of the judgment of conviction, order
10 such person not to operate any motor vehicle for any purpose for a
11 period of five years from the date ordered by the court. Such
12 order of the court shall be administered upon sentencing, upon
13 final judgment of any appeal or review, or upon the date that any
14 probation is revoked, whichever is later. Such revocation shall
15 not run concurrently with any jail term imposed.

16 Sec. 5. Original sections 29-2221, 60-4,108, and
17 60-4,109, Reissue Revised Statutes of Nebraska, are repealed.